

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Terry Kalil,

Complainant,

PROBABLE CAUSE
ORDER

vs.

Larry A. Knutson,

Respondent.

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Kathleen D. Sheehy on August 27, 2004, to consider a complaint filed by Terry Kalil on August 25, 2004.

Terry Kalil, 23586 Warbler Way, Detroit Lakes, Minnesota 56501, participated by telephone.

Larry A. Knutson, 33165 State Highway 34, Detroit Lakes, Minnesota 56501, participated by telephone.

Based upon the record and all of the proceedings in this matter, including the Memorandum incorporated herein, the Administrative Law Judge finds that (1) **there is probable cause** to believe that Mr. Knutson failed to include a disclaimer on roadside signs posted in District 1 of Becker County, in violation of Minn. Stat. § 211B.04; and (2) **there is no probable cause** to believe that Mr. Knutson violated Minn. Stat. § 211B.13 by permitting his family to throw candy from the back of a pickup truck during the Turkey Days Parade in Frazee, Minnesota, and the Wolf Lake Days Parade in Wolf Lake, Minnesota.

ORDER

IT IS HEREBY ORDERED:

1. That there is probable cause to believe that Larry A. Knutson violated the disclaimer requirements of Minn. Stat. § 211B.04; and this allegation is referred to the Chief Administrative Law Judge for assignment of a three-judge panel for disposition based on the record created during the probable cause hearing;

2. That there is no probable cause to believe that Larry A. Knutson violated Minn. Stat. § 211B.13, and this allegation of the Complaint is DISMISSED.

Dated: August 31, 2004

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge
612/341-7602

MEMORANDUM

Background Facts

During the probable cause hearing, the parties agreed that the following facts were not disputed.^[1] Mr. Knutson posted approximately 100 roadside signs in District 1 of Becker County reading "Vote Larry KNUTSON Commissioner District 1." He did not include a disclaimer identifying the name and address of the person who paid for the signs, which in this case is Mr. Knutson himself. He testified that he spent \$388 from his own funds on the signs and stands. He maintained that he inadvertently failed to include the disclaimer; that he has examined other campaign signs in District 1 of Becker County; and that no candidate for County Commission has included both the name and address of the person who paid for the signs. Mr. Knutson is willing to remedy any violation, if one occurred, by immediately preparing labels with the appropriate disclosure to affix to the signs.

Mr. Knutson, his wife, daughter, and several grandchildren participated in the Turkey Days Parade in Frazee, Minnesota on August 7, 2004. Frazee is not located within District 1 of Becker County. The Knutsons rode in the back of a pickup truck that was identified with his name and the office he seeks. The persons riding in the truck wore T-shirts bearing his name and the office sought. In addition to the Knutson family, the parade included the fire and sheriff's departments, marching bands, beauty pageant contestants, and approximately 75 to 100 floats advertising local businesses. Persons on most of the floats threw penny candy to children lined up to watch the parade, which was 0.6 of a mile in length. Mr. Knutson's family threw candy as well, although he did not. The Wolf Lake Parade, held on August 15, 2004, was a smaller event (approximately 50 floats) conducted in a similar manner. Most participants, including the Knutson family, threw candy along the route. Wolf Lake is located within District 1 of Becker County.

Legal Analysis

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.^[2] The material facts in this case are not in dispute.

With regard to the disclaimer issue, the statute provides in relevant part as follows:

- (a) A person who participates in the preparation or

dissemination of campaign material other than as provided in section [211B.05](#), subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the committee,(address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the committee,(address), in support of(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

(c) In the case of broadcast media, the required form of disclaimer is: "Paid for by the committee."

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to(insert name of candidate or ballot question.....)"; or that "this publication is not circulated on behalf of any candidate or ballot question."

(e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, or personal letters that are clearly being sent by the candidate.

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$500 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.^[3]

Mr. Knutson admits that the disclaimer was not in place because he inadvertently failed to include it. He argues nonetheless that his roadside signs are "objects" within the meaning of § 211B.04(e) that do not require a disclaimer. Objects are to be distinguished from "campaign material," which is defined as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media."^[4] Mr. Knutson's roadside signs urging readers to vote for him appear to be written campaign material fitting the definition above, as opposed to an object such as a matchbook cover

or pen. Mr. Knutson also argues that because he spent less than \$500 he is not required to use the disclaimer under § 211B.04(f); this section, however, applies only to individuals or associations who act independently of any candidate. Accordingly, there is probable cause to believe a violation of the disclaimer statute occurred.^[5]

Mr. Knutson did not raise a constitutional challenge to the disclaimer requirement. In *Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 291 F. Supp.2d 1052 (D. Minn. 2003), the United States District Court for the District of Minnesota declared the disclaimer requirements of Minn. Stat. § 211B.04 (2003) to be a facial violation of the First Amendment and enjoined the state from enforcing the statute. The state did not appeal this decision. The legislature amended the statute during the 2004 session, however, in an effort to cure the constitutional defects found by the federal court. The three-judge ALJ panel assigned to consider disposition of this allegation of the complaint will consider the effect of the 2004 amendment on Minn. Stat. § 211B.04.

With regard to the allegation concerning bribery (throwing candy from the truck), the statute provides in relevant part as follows:

Bribery, advancing money, and treating prohibited. A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. This section does not prevent a candidate from stating publicly preference for or support of another candidate to be voted for at the same primary or election. Refreshments of food or nonalcoholic beverages of nominal value consumed on the premises at a private gathering or public meeting are not prohibited under this section.^[6]

Mr. Knutson contends that tossing penny candy to children from a float in a parade cannot constitute bribery by any definition. Ms. Kalil does not claim that the candy tossed by Mr. Knutson's family has any particular monetary value, but she maintains that other candidates and office holders who participated in the parade did not toss candy and that all candidates should be required to follow the same rules. While uniformity of construction and practice is certainly desirable in these areas, the issue here is whether Mr. Knutson's conduct violated the statute. The Administrative Law Judge cannot conclude that the candy tossed in these parades is a "thing of monetary value" that is prohibited. This is not like giving cash, a free meal, or a drink to the public in exchange for a vote. Furthermore, the parade in Frazee was not even within the district in which Mr. Knutson is running for office, and it is even more difficult to conclude that the candy tossed in Frazee was tossed with the intent of inducing voters to refrain from voting or to vote in a particular way. Because there is no probable

cause to believe that Mr. Knutson violated Minn. Stat. § 211B.13, subd. 1, this allegation of the complaint is dismissed.

K.D.S.

NOTICE OF RECONSIDERATION RIGHTS

Minn. Stat. § 211B.34, subd. 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings **within two business days** after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under section 211B.35 within five business days after granting the petition.

^[1] Ms. Kalil and Mr. Knutson also agreed, assuming the undersigned found probable cause on either allegation, that a three-judge panel could issue a dispositive decision based on the record created at the probable cause hearing and that no evidentiary hearing was necessary.

^[2] Minn. Stat. § 211B.34, subd. 2.

^[3] Minn. Stat. § 211B.04; Minn. Laws 2004 ch. 293, art. 3, §§ 1 & 2.

^[4] Minn. Stat. § 211B.01, subd. 2.

^[5] After the record of the probable cause hearing closed, Ms. Kalil submitted to the Administrative Law Judge as “an additional piece of evidence” a copy of a campaign flyer concerning Mr. Knutson that also fails to identify the name and address of the person who prepared and paid for it. This flyer was not discussed at the probable cause hearing. Assuming Mr. Knutson prepared and paid for this item, it should also have the required disclaimer.

^[6] *Id.*, § 211B.13, subd. 1.